

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

BANC OF AMERICA LEASING &
CAPITAL, LLC,

Plaintiff,

v.

Civil Action No.: 3:16-cv-06593

Judge: _____

REVELATION ENERGY, LLC, a
Kentucky limited liability company authorized to
do business in West Virginia, and
REVELATION ENERGY HOLDINGS, LLC, a
Kentucky limited liability company,

Defendants.

COMPLAINT

Plaintiff, Banc of America Leasing & Capital, LLC (the “**Lender**”), by and through counsel, Miles & Stockbridge P.C., states as follows for its Complaint (the “**Complaint**”) against Defendants, and in support states as follows:

Parties and Jurisdiction

1. Plaintiff is, and was at all times relevant to this Complaint, a Delaware limited liability company with its principal place of business located in California.
2. Defendant Revelation Energy, LLC (“**Revelation**”), is, upon information and belief, a Kentucky limited liability company that is authorized to do business in West Virginia.
3. Defendant Revelation Energy Holdings, LLC (“**Revelation Holdings**”) is, upon information and belief, a Kentucky limited liability company.
4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332(a).
5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

Preliminary Statement

6. This is an action to recover a deficiency balance due and owing after credit for liquidation of collateral securing repayment of indebtedness.

7. Caterpillar Financial Services Corporation (“**Caterpillar Financial**”) and the Lender have an ongoing relationship in which Caterpillar Financial assigns to the Lender certain installment sales contracts Caterpillar Financial acquires from vendors selling equipment to purchasers.

8. The assignments to the Lender under this relationship are evidenced by that certain Master Assignment Agreement, dated December 8, 2006 (the “**Master Agreement**”), along with a Specification of Assigned Contract specifying the particular contract or contracts assigned.

9. Caterpillar Financial, in turn, is engaged in an indirect lending business, whereby a vendor will sell equipment to a purchaser and then immediately assign the installment contract to Caterpillar Financial. Although the form of the transaction is that Caterpillar Financial takes an assignment from the vendor, it is really Caterpillar Financial that is extending credit to the purchaser.

10. Under this framework, upon information and belief, Caterpillar Financial and Revelation had a working lending relationship in which Caterpillar Financial would agree to extend a certain amount of credit for Revelation to purchase equipment from vendors.

11. Upon information and belief, at some point in Revelation’s relationship with Caterpillar Financial, Revelation requested that Caterpillar Financial extend additional credit for Revelation’s purchase of additional equipment.

12. Upon information and belief, Caterpillar Financial agreed to extend this additional credit, subject to, among other things, Revelation Holdings guaranteeing Revelation's repayment of all amounts owed to Caterpillar Financial.

13. Revelation Holdings executed and delivered that certain Continuing Guaranty of Payment, dated April 7, 2010 (the "**Guaranty**"), pursuant to which Revelation Holdings guaranteed repayment of all indebtedness of Revelation to Caterpillar Financial.

14. The contracts that are the subject of this Complaint were originated by Wayne Supply Company as the vendor selling to Revelation, were immediately assigned to Caterpillar Financial as the indirect lender, and were then subsequently assigned again to the Lender. Thus, the Defendants' obligations under the contracts and the Guaranty are now owed to the Lender, as more fully described below.

The Contracts

15. On or about May 30, 2010, Revelation entered into that certain Installment Sale Contract (Security Agreement), dated May 30, 2010 (the "**First Contract**"), pursuant to which Revelation purchased certain equipment (the "**First Contract Equipment**") and granted a lien on and security interest in the First Contract Equipment to Wayne Supply Company.

16. The First Contract, and the security interest granted therein, were immediately assigned to Caterpillar Financial pursuant to an Assignment of Installment Contract (Without Recourse), dated May 30, 2010 (the "**First Assignment**," together with the First Contract and the Guaranty, the "**First Contract Documents**"). The First Contract Documents are attached to and made a part of this Complaint as Exhibit A.

17. On or about August 15, 2010, Revelation entered into that certain Installment Sale Contract (Security Agreement), dated August 15, 2010 (the "**Second Contract**"), pursuant to

which Revelation purchased certain equipment (the “**Second Contract Equipment**”) and granted a lien on and security interest in the Second Contract Equipment to Wayne Supply Company.

18. The Second Contract, and the security interest granted therein, were immediately assigned to Caterpillar Financial pursuant to an Assignment of Installment Contract (Without Recourse), dated August 16, 2010 (the “**Second Assignment**, together with the Second Contract and the Guaranty, the “**Second Contract Documents**”). The Second Contract Documents are attached to and made a part of this Complaint as Exhibit B.

19. On or about July 15, 2011, Revelation entered into that certain Installment Sale Contract (Security Agreement), dated July 15, 2011 (the “**Third Contract**,” together with the First Contract and the Second Contract, the “**Original Contracts**”), pursuant to which Revelation purchased certain equipment (the “**Third Contract Equipment**,” together with the First Contract Equipment and the Second Contract Equipment, the “**Collateral**”) and granted a lien on and security interest in the Third Contract Equipment to Wayne Supply Company.

20. The Third Contract, and the security interest granted therein, were immediately assigned to Caterpillar Financial pursuant to an Assignment of Installment Contract (Without Recourse), dated July 29, 2011 (the “**Third Assignment**, together with the Third Contract and the Guaranty, the “**Third Contract Documents**,” and the Third Contract Documents, together with the First Contract Documents and the Second Contract Documents, the “**Contract Documents**”). The Third Contract Documents are attached to and made a part of this Complaint as Exhibit C.

21. The Contract Documents were assigned to the Lender under the Master Agreement pursuant to that certain Specification of Assigned Contract, dated August 15, 2012

(collectively, the “**Caterpillar Assignment**”). Copies of the Master Agreement and the Caterpillar Assignment are collectively attached to and made a part of this Agreement as Exhibit D.

22. By virtue of the Caterpillar Assignment, the Lender became the payee of the indebtedness under the Contract Documents (the “**Indebtedness**”) and the lienholder with respect to the Collateral.

23. Upon information and belief, Revelation acquired the Collateral for use in Revelation’s mining operations in West Virginia, and the Collateral was kept and operated in coal operations located in the southern part of the state.

Default and Liquidation of Collateral

24. Revelation defaulted in its payment obligations under the Contract Documents.

25. As a result of the payment default, and pursuant to the Contract Documents and applicable law, the Lender liquidated all of the Collateral securing repayment of the Indebtedness.

26. The liquidation of the Collateral resulted in application of a total of \$576,211.34 as a credit on the Indebtedness (the “**Collateral Credit**”).

Deficiency

27. After application of the Collateral Credit, as of July 18, 2016, the amount due and owing under the First Contract Documents, including interest accrued through July 18, 2016, is \$1,200.97, plus interest that continues to accrue at the rate of \$0.21 per day from July 18, 2016 (the “**First Contract Deficiency Amount**”).

28. After application of the Collateral Credit, as of July 18, 2016, the amount due and owing under the Second Contract Documents, including interest accrued through July 18, 2016,

is \$2,232.60, plus interest that continues to accrue at the rate of \$0.38 per day from July 18, 2016 (the “**Second Contract Deficiency Amount**”).

29. After application of the Collateral Credit, as of July 18, 2016, the amount due and owing under the Third Contract Documents, including interest accrued through July 18, 2016, is \$608,762.49, plus interest that continues to accrue at the rate of \$86.27 per day from July 18, 2016 (the “**Third Contract Deficiency Amount**,” together with the First Contract Deficiency Amount and the Second Contract Deficiency Amount, the “**Deficiency**”).

30. Contrary to the terms of the Contract Documents and their respective obligations, the Defendants have not paid the Deficiency.

31. Defendants, Revelation Energy, LLC and Revelation Energy Holdings, LLC, owe Plaintiff, Banc of America Leasing & Capital, LLC, jointly and severally, the total of \$612,196.06, plus interest accruing at the aggregate rate of \$86.86 per day from July 18, 2016, upon the obligations evidenced by the Contract Documents.

WHEREFORE, the Lender respectfully requests that this Court enter an Order: (a) awarding Plaintiff judgment against each of the Defendants, jointly and severally, in the sum of \$612,196.06, including interest accrued through July 18, 2016, plus interest that continues to accrue on the outstanding principal balance at the aggregate rate of \$86.86 per day until paid; and (b) granting Plaintiff such other relief as is just and proper.

BANC OF AMERICA CAPITAL & LEASING,
LLC

By Counsel

/s/ Michael Halaiko

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